UNITED
NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.6/1997/5
18 February 1997
ENGLISH
ORIGINAL: ENGLISH, FRENCH
AND SPANISH

COMMISSION ON THE STATUS OF WOMEN
Forty-first session
10-21 March 1997
Item 5 of the provisional agenda*

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, INCLUDING THE ELABORATION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION

Additional views of Governments, intergovernmental organizations and non-governmental organizations on an optional protocol to the Convention

Report of the Secretary-General

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* E/CN.6/1997/1.

97-00732 (E) 040397

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INTRODUCTION

1. The Commission on the Status of Women, in its resolution 40/8 of 22 March 1996 on the elaboration of a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women,[1] requested the Secretary-General to invite Governments, intergovernmental organizations and non-governmental organizations to submit additional views on an optional protocol to the Convention, taking into account the elements contained in suggestion 7, adopted by the Committee on the Elimination of Discrimination against Women at its fourteenth session, as well as the deliberations of the in-session Open-ended Working Group of the Commission, and to submit to it, at its forty-first session, a comprehensive report, including a synthesis of the views expressed. The present report is submitted in accordance with that request.

2. In the same resolution, the Commission requested the Secretary-General to provide it with a comparative summary of existing communications and inquiry procedures and practices under international human rights instruments and under the Charter of the United Nations. The comparative summary is before the Commission in document E/CN.6/1997/4.

3. A report of the Secretary-General containing the views of 18 Governments and 19 non-governmental organizations on the elaboration of a draft optional protocol (E/CN.6/1996/10 and Corr.1 and Add.1 and 2) was considered by the in-session Open-ended Working Group of the Commission on the Status of Women at its fortieth session. The report of the Working Group is annexed to the report of the Commission on its fortieth session.[2]

4. In accordance with Commission resolution 40/8, the Secretary-General addressed a note verbale, dated 18 July 1996, to member States and observer States, drawing their attention to the resolution and inviting them to submit their additional views on an optional protocol to the Secretariat not later than 1 October. Subsequently, in a second note verbale, dated 3 October 1996, the Secretary-General informed delegations that, in order to enable all interested Governments to submit their views, the deadline for submission of comments had been extended to 4 November but that comments received after 15 November could not be taken into consideration in the report.

5. A communication dated 12 August 1996 was addressed to intergovernmental and non-governmental organizations, inviting them to submit their additional views not later than 1 October 1996.

6. A total of 21 replies were received in response to the two notes verbales from the following member States: Chile, Costa Rica, Denmark, Netherlands, Turkey, Luxembourg, Panama, Spain, Cook Islands, South Africa, Colombia, Cuba, Austria, Liechtenstein, Philippines, Italy, Venezuela, China, Mexico, Morocco and Mali. The Netherlands noted that its previously communicated position, reflected in document E/CN.6/1996/10, continued to be relevant and stated that it would not communicate any additional views. The Cook Islands acknowledged receipt of the note verbale but did not submit its views in time for inclusion in the report.

7. The following 12 non-governmental organizations submitted comments: Latin American and Caribbean Women's Health Network (LACWHN), Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM), 49 members of Costa Rican groups and non-governmental organizations (hereinafter referred to as "the Group from Costa Rica"), Danish Women's Society, International Commission of Jurists/Dutch Section (NJCM), Japanese Association of International Women's Rights, Vienna NGO Committee on the Status of Women, Comité d'Action pour les droits de l'Enfant et de la femme (CADEF), Coordinadora Nacional de Radio (CNR) (Peru), Ain ø Salish Kendra, Promoción Cultural "Creatividad y Cambio", and Coordinadora Nacional de Derechos Humanos (CNDDHH) (Peru).

8. One intergovernmental organization, the Council of Europe, submitted comments.

9. In accordance with the request contained in Commission resolution 40/8, this report first presents a synthesis of the replies received. It then reflects, comprehensively, the additional views received with regard to the elements contained in suggestion 7 of the Committee on the Elimination of Discrimination against Women.[3]

I. SYNTHESIS OF REPLIES RECEIVED FROM GOVERNMENTS, INTERGOVERNMENTAL ORGANIZATIONS AND NON-GOVERNMENTAL ORGANIZATIONS

A. Views on an optional protocol

10. The Governments of Costa Rica, Luxembourg, Denmark, Turkey, South Africa, Austria, Chile, Spain, Panama, the Philippines, Liechtenstein, Venezuela, Cuba, Italy and Mali, as well as the Council of Europe, the Japanese Association of International Women's Rights, NJCM, LACWHN, CNR, Promoción Cultural "Creatividad y Cambio", CNDDHH, the Group from Costa Rica, CADEF and Ain o Salish Kendra, provided their views on an optional protocol. They have been summarized below.

11. Support was expressed for the elaboration of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. It was noted that both a communications and an inquiry procedure along the lines contained in suggestion 7 of the Committee on the Elimination of Discrimination against Women should be contained in such a protocol. It was recommended that further negotiations be conducted on the basis of a specific draft text, and the draft adopted by the Maastricht 1994 Expert Meeting was seen as the most suitable text for that purpose. It was also recommended that the process of elaborating an optional protocol be conducted in an open-ended and transparent manner, and that the resources necessary to ensure that be made available.

12. It was also noted that the formulation of the guiding principle of the optional protocol, which would determine what provisions would be included in it, was still not entirely clear. Universal ratification of the Convention and its effective implementation was to be considered the first priority.

13. Replies pointed out that the preparation of such an optional protocol was called for and was a key element in the follow-up to the World Conference on Human Rights and the Fourth World Conference on Women. Support was expressed for the speedy conclusion of the work on such an optional protocol and its subsequent adoption and entry into force.

14. It was noted that the elaboration of an optional protocol could make a significant contribution to strengthening the Convention, as well as the Committee. An optional protocol would contribute to the promotion of respect for women's human rights and more effective implementation, including monitoring and enforcement, of the rights guaranteed to women in the Convention. It was suggested that the process of strengthening women's rights and the pertinent international instruments be continued. The elaboration of an optional protocol would be a sign of the importance that the international community accorded to equality between the sexes and might therefore influence attitudes.

15. The current international means for the implementation of the Convention were considered to be inadequate and insufficient. They were seen as a weakness of the Convention. It was pointed out that mechanisms for the enforcement of "women-specific" human rights standards had been less effective than those for more general "human rights" standards. It was observed that there was a lack of specific procedures within the United Nations system allowing for the consideration of specific cases or extensive violations, of women's human rights, and providing for the possibility of redress for violations suffered. Human rights issues of particular concern to women received relatively little attention under other treaty-based or Charter-based mechanisms.

16. It was noted that the implementation of human rights treaties required the adoption of national measures by States Parties to give effect to the provisions of the Convention and international measures and procedures for enforcing the Convention. An optional protocol was viewed as an international mechanism for keeping the Convention up to date and facilitating its implementation. At present, the means of international supervision of the Convention are limited to the reporting procedure under article 18 of the Convention. The implementation of the Convention would also require monitoring by an international body. An optional protocol would lead to the necessary enforcement of the Convention.

17. It was suggested that such a protocol would place the Convention on an equal footing with other human rights instruments that had communications procedures, such as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Racial Discrimination (CERD) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and would thus enhance the status of the Convention and strengthen the effective implementation of its provisions. Since such mechanisms already existed under other instruments, its elaboration in the framework of the Convention on the Elimination of All Forms of Discrimination against Women had indeed become necessary.

18. The entry into force of an optional protocol would encourage States parties to make a major effort to comply with their treaty obligations resulting from the ratification of the Convention. A right to petition would also encourage

compliance with the Convention in national legal systems and would provide guidance to States parties in their efforts to implement the Convention.

19. An optional protocol could also provide an incentive for States parties to embark expeditiously on the establishment of domestic control mechanisms in order to avoid international oversight. That result would doubtless be the most desirable, since the goal of international human rights law was its incorporation into domestic legal systems. The protection of victims should also take place primarily at the domestic level. Any international supervision should be subsidiary to domestic supervision.

20. There were currently no specific procedures available within the United Nations system for considering individual cases or extensive violations of the human rights of women. As a consequence, an optional protocol to the Convention would contribute to the integration of the human rights of women throughout the United Nations system through the development of a specific doctrine and jurisprudence and its impact on other human rights mechanisms within the United Nations system.

21. It was suggested that an optional protocol would facilitate implementation of the Convention through the identification of situations of specific or general discrimination that would not be evident from reports presented under article 18 of the Convention. The reporting procedure was currently the only means of international supervision. The preparation of an optional protocol would thus represent qualitative progress in the promotion and protection of women's human rights.

22. The adoption of an optional protocol would not relieve States parties to the Convention of their obligations to submit reports in accordance with article 18 of the Convention. The complementary functions of the two procedures was noted.

23. Replies noted that an optional protocol to the Convention would reinforce international guarantees for the human rights of women. It would fill the existing vacuum in the defence of women's human rights. No other instrument or procedure had that as its sole objective.

24. The elaboration of a strong instrument that would command the greatest possible support and a large number of ratifications was recommended. The protection afforded under a communications procedure to the Convention should be no less effective than that offered by already existing procedures of comparable instruments in the United Nations human rights context. The experience gained via comparable procedures needed to be taken into account, and at the same time attempts should be made to go further to create a modern system of procedures that met the multitude of different requirements. The optional protocol should provide a flexible procedure enabling the Committee to deal effectively with all aspects of alleged violations of the human rights of women.

25. The argument that an optional protocol procedure would be appropriate only in the case of serious violations of human rights or "serious international crimes" was rejected. Such an argument suggested that discrimination against women was less grave than other forms of human rights violations. However,

women were often victims of the most serious human rights violations. Such offences should therefore be considered as among the most serious forms of violations, creating an urgent need for a mechanism to examine allegations of such violations.

26. It was noted that the existence of a complaints mechanism, such as that operating under the European Convention on Human Rights, had proven to be essential for the effective respect of the rights and freedoms enshrined in treaties and their enjoyment without discrimination on any grounds, including sex. At the same time, the process initiated for the elaboration of the draft additional protocol should not detract attention from the need to ensure widespread ratification and improved implementation of the Convention, or from the necessity for States to withdraw reservations that they may have made to the Convention.

B. Duplication/overlapping

27. A number of replies, including those from Mexico, Venezuela, Turkey, Italy, South Africa, Luxembourg, Austria, Chile, Liechtenstein and LACWHN, dealt with the question of possible overlap or duplication between any optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women and other existing human rights mechanisms. In that regard, the availability to women of such existing mechanisms was also addressed.

28. As regards issues of duplication/overlapping, a number of sections in the report of the Secretary-General on a comparative summary of existing treaty- and Charter-based communications and inquiry procedures (E/CN.6/1997/4) may provide useful information. Its sections covering admissibility criteria, the communications procedure of the Commission on the Status of Women and the 1503 procedure of the Commission on Human Rights may be particularly pertinent with regard to the issues under discussion here.

29. Replies noted that unnecessary duplication or overlap with existing procedures would need to be avoided. The relationship between an optional protocol to the Convention and existing human rights conventions and enforcement procedures needed to be examined and clarified. It was noted that the political, civil, economic, social and cultural rights of women were already enshrined in ICCPR and in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which both provide for the enjoyment of rights on the basis of non-discrimination on the grounds of sex. It was suggested that women's human rights should be mainstreamed throughout other human rights mechanisms.

30. It was also noted that the Committee on the Elimination of Discrimination against Women was both an independent expert body and the only body specialized in the human rights of women and discrimination against women, thus distinguishing it from the bodies established under other procedures. No duplication with other procedures would arise since the Convention on the Elimination of All Forms of Discrimination against Women was the only instrument dealing exclusively with women's equality with men and non-discrimination. The specialized nature of the treaty and the expertise of the Committee might

encourage women to seek redress from an international body, which had rarely been the case under existing procedures, such as the first Optional Protocol under ICCPR.

31. It was pointed out that the availability of such a procedure would not enable women to bring the same claim before two or more mechanisms at the same time. Rather, it would enable them to choose the most appropriate mechanism. It was suggested that the multiple or simultaneous use of procedures could be avoided by introducing admissibility criteria. That was the aim of element 9 (f) of suggestion No. 7, as reflected in the practice of existing human rights treaty bodies.

32. It was pointed out that the issue of overlap and duplication was not new. It had been raised at the time of the preparation of the Convention and its reporting procedure. Although ICCPR and the ICESCR had already been adopted, the international community had adopted the Convention on the Elimination of All Forms of Discrimination against Women because it considered that two general human rights treaties were insufficient to achieve the elimination of discrimination on the basis of sex. Similarly, although ICCPR contained substantive guarantees against torture, the Convention against Torture had been adopted as well. The existence of ICCPR and its first Optional Protocol had not been considered sufficient reason to prevent the adoption of the Convention against Torture with both an individual communications and an inquiry procedure.

33. The potential for overlap of an optional protocol to the Convention with the following existing procedures was discussed: the 1503 procedure, the communications procedure of the Commission on the Status of Women, the Special Rapporteur on violence against women, and the communications procedure under the first Optional Protocol of ICCPR. It was proposed that the various bodies dealing with the issue of discrimination against women would influence one another in a positive and mutually stimulating way.

34. It was pointed out that the communications procedure of the Commission on the Status of Women was little known and weak compared to other mechanisms elsewhere in the United Nations human rights system. That procedure could not be compared to an optional protocol procedure since the Commission was an intergovernmental body. Substantial differences existed between the two procedures. It was noted that, in principle, an expert body transcended any particular interests that Governments might have. Experience showed that both intergovernmental and expert procedures were needed in order to ensure compliance by States with human rights standards.

35. The mandate of the Special Rapporteur on violence against women was of a very different nature from the responsibilities that would be entrusted to the Committee under an optional protocol.

36. Notwithstanding the considerable substantive overlap between the guarantees of the Convention and the non-discrimination guarantees of ICCPR, especially concerning articles 2, 3 and 26 of the Convention, a number of reasons in favour of a communications procedure to the Convention were identified. A separate complaints procedure within the Convention context would ensure a specific focus on the gender aspects of human rights, a task that required the full attention

of a supervisory body. The Human Rights Committee monitored compliance with all the rights contained in ICCPR and could not focus its full attention on only one aspect of ICCPR. A supervisory body could monitor only the rights covered by the instrument that established it, and not those covered by another instrument. Since the rights contained in ICCPR were limited and quite different from those contained in the Convention, an exclusive reliance on the Human Rights Committee established under ICCPR for the protection of the human rights of women would mean that important obligations of States parties enshrined in the Convention would remain outside the control of a supervisory body. In that regard, a major emphasis was required on the economic and social aspects of women's rights, which were being considered only in a marginal way by the Human Rights Committee. Lastly, the first Optional Protocol allowed communications only with regard to violations of the rights of individuals, whereas violations of the human rights of women also consisted of systematic failures to implement obligations. That required a different emphasis from a narrow focus on individual violations.

37. It was noted that the competent bodies of the Council of Europe were currently considering the elaboration of an optional protocol to the European Convention on Human Rights on the fundamental right of women and men to equality. Such a protocol would mean that that right would be recognized as an autonomous, fundamental and justiciable right; its main consequence would be that respect for that right would be supervised by international judicial procedures (the Commission and the Court of Human Rights). In line with the case law in the Marckx case, it would also provide a legitimate basis for positive action to correct subsisting inequalities. Work on the possible additional protocol to the Convention and on a possible protocol to the European Convention on Human Rights should be seen as complementary and convergent and aimed at the enhanced promotion of women's human rights.

C. Justiciability

38. A number of Governments, intergovernmental and non-governmental organizations commented on the question of the justiciability of the provisions contained in the Convention, including Spain, Italy, Mexico, Panama, Austria, Luxembourg, Liechtenstein, the Philippines, Venezuela, Chile, NJCM, the Council of Europe, the Japanese Association of International Women's Rights, LACWHN, CNR, the Promoción Cultural "Creatividad y Cambio", CNDDHH, and the Group from Costa Rica.

39. Since all human rights were to a greater or lesser extent considered to be justiciable, it was recommended that all substantive provisions of the Convention be considered justiciable. The principles of non-discrimination and equality upon which the Convention was based had been found to be justiciable by international and regional supervisory bodies, and remained subject to existing communications procedures and review by such bodies. Since all the provisions of the Convention were to be understood in light of those principles, they were also justiciable.

40. It was recommended that the decision on the question of the justiciability of the provisions of the Convention be left to the Committee on the Elimination

of Discrimination against Women. A State party's fulfilment of its obligations under the Convention was considered capable of scrutiny and meaningful review by an independent international supervisory body. The experience gained in connection with the work of other human rights treaty bodies showed that that was a viable and flexible solution for this important question.

41. Furthermore, an optional protocol would allow the Committee to develop a practice that would clarify the content of rights and of some of the more broadly defined obligations in the provisions of the Convention. Views expressed by the Committee on the basis of such an international instrument would lead to a much more detailed understanding of those obligations as far as alleged violations of the equality and non-discrimination requirements of the Convention were concerned. The Committee's case law would contribute to the promotion and protection of all human rights of women. Such case law could make significant contributions to further enhancing the justiciability of economic, social and cultural rights.

42. It was pointed out that the content of rights, and therefore their justiciability, were determined by the judiciary, at both the national and the international levels. The Committee was therefore the most appropriate body to decide, on the basis of its expertise, to what extent an invoked right was justiciable in any concrete case before it.

43. Concern was expressed about an approach that would differentiate between "justiciable" and "non-justiciable" provisions. Such an approach would lead to two categories of rights and would thus suggest that some provisions of the Convention were of greater importance than others. That would seriously impair the integrity of the Convention, which put forward the human rights of women in a comprehensive manner, as a single whole. It would establish a hierarchy of rights. It was feared that, as a result of such categorization into justiciable and non-justiciable rights, some provisions of critical importance might not fall within the framework of the optional protocol and the competence of the Committee, and thus might be excluded from the enhanced implementation intended by the proposed protocol.

44. Attention was drawn to the frequent emphasis placed by international forums on the indivisibility, interdependence and interrelatedness of all human rights, be they civil, political, economic, social or cultural. It was noted that all human rights were equally important and should therefore have supervisory procedures of equal strength. The adoption of a protocol in respect of an instrument that contained civil and political, as well as economic, social and cultural human rights, would constitute an important step towards the actual realization of that principle.

45. It was pointed out that, in discussing justiciability, the question of the content of an obligation needed to be differentiated from the question of the nature of an obligation. When considering the nature of the obligations contained in the Convention, it was noted that all its provisions established an immediate and direct obligation for States parties to the Convention, an obligation that was no different from the obligations emanating from other human rights treaties. States parties to human rights treaties had accepted to be legally bound by them. Such treaties did not constitute mere declarations of

intent but concrete obligations with which States parties must comply. In that regard, the Convention on the Elimination of Discrimination against Women was no exception.

46. Responses identified different types of obligations established by the Convention. It was suggested that obligations comparable to those found in the classical civil and political rights context, which impose an explicit and immediate obligation on States parties, were clearly justiciable. Articles 7 (a), 9, 13, 15 and 16 were suggested as falling within that category. Others were rather programmatic in character, and apparently granted a State party a wide margin of discretion or appreciation in choosing the means for achieving a specific goal defined in the Convention. Articles 5, 6, 8, 10, 11, 12 and 14 were suggested as falling within that second category.

47. Another categorization identified three principal sets of obligations: "States parties shall ensure/shall accord/shall grant the right ..."; "States parties shall undertake ..."; and "States parties shall take all appropriate measures (in order to ensure) ...". A further categorization found that the Convention provided for women's right to equality and non-discrimination in all areas of private and public life, with other provisions of the Convention establishing an obligation for States parties to take appropriate steps towards specific goals.

48. Provisions considered to be more of a programmatic nature were, without exception, considered capable of supervision. It was pointed out that the principle of compliance in good faith with Convention obligations (pacta sunt servanda) provided sufficient basis for the examination of compliance by the Committee. Nevertheless, in its assessment, the Committee would need to take into consideration the nature of each specific obligation. In respect of provisions that accorded a State party a margin of discretion, external review would be restricted to the question of whether the State had taken reasonable steps within a range of options. When entrusted with a quasi-judicial oversight responsibility in the framework of an optional protocol procedure, the Committee would need to take into consideration that margin of appreciation of States parties. In each case, trends in progress towards a goal, the existence of legislation, or other means of implementation could serve as basis for the supervisory body to conclude whether a State party had or had not complied with its treaty obligations. It would be possible for the Committee to assess whether a State had taken the minimum steps necessary for carrying out its obligations in good faith.

49. It was noted that the question of the justiciability of the specific provisions of the Convention was apparently connected with a traditional approach to the implementation of human rights, which differentiated between "classical" civil and political rights and economic, social and cultural rights. In that regard, civil and political rights were seen as requiring the State to refrain from infringing conduct (negative rights, directed against infringement). Economic, social and cultural rights, on the other hand, were seen as requiring the State to take positive steps to ensure the enjoyment of rights (positive rights). That approach would suggest that rights other than civil and political rights were too vague and insufficiently detailed to form the subject of measurement or supervision.

50. The dynamic development of the field of human rights, however, had made it clear that such a categorization and the subsequent separate treatment of rights could be detrimental to an integrated approach to human rights questions. It should therefore no longer be upheld. Similarly, many classical civil and political rights required positive action on the part of the State party to ensure their enjoyment. For example, the right to due process required such steps as the physical creation and maintenance of facilities and the payment of salaries to judges and other personnel. It was also suggested that all those who promoted the right to development should be in favour of adopting a comprehensive approach and the justiciability of all rights, since economic, social and cultural rights had traditionally been classified as non-justiciable.

51. The case law of the Human Rights Committee and other international and regional human rights bodies with communications and other control mechanisms were provided as illustrations of that view. Many provisions in such instruments were formulated in vague terms or required elaboration. For example, article 14 of ICCPR contained the concept of "without undue delay", articles 21 and 22 spoke of "public order (ordre public)", article 4 referred to "public emergency which threatens the life of the nation", and article 22 used the term "necessary in a democratic society". With regard to the latter, reference was made to the substantial case law under article 8 of the European Convention of Human Rights and Fundamental Freedoms. The case law of the European Court of Human Rights also supported the view that the traditional distinction made between civil and political rights, as being justiciable, and economic, social and cultural rights, as being non-justiciable, was not clearly defined.

52. Accordingly, it was concluded that justiciability was more an issue of degree, given the particularities of a case, rather than of particular rights. In the examples given in paragraph 49 above, it was up to the supervisory body, on a case-by-case basis and as objectively and generally as possible, to establish the criteria for determining whether a State party had fulfilled its obligations. While recognizing the State party's margin of appreciation in the fulfilment of its obligations, it was up to the treaty body to determine whether a State party had taken appropriate steps in order to avoid violations and to fulfil its obligations under the international instrument. Given that need for assessment of the obligations of States parties in relation to classical rights, it was concluded that a similar assessment would be required to determine the fulfilment of obligations under the Women's Convention.

53. In reviewing the content of the Convention on the Elimination of Discrimination against Women, it could be concluded that all its provisions could be subject to supervision of compliance, either through an individual communications procedure or through an inquiry procedure for situations of serious or systematic failure to comply.

54. In recommending further detailed discussion of justiciability, it was also noted that the provisions of the Convention do not per se create human rights of or for women, since the Convention as a whole reiterated, in a specific manner, the right of women not to be discriminated against on the basis of sex, and to have the necessary national legal, political and administrative measures in place to be able fully to exercise their human rights. The rights to

non-discrimination on the basis of sex and the implementation of those rights were already enshrined in ICCPR and ICESCR in their common article 3, as well as, respectively, in their articles 2.1 and 2.2.

55. When considering the rights contained in ICCPR and ICESCR and in the Convention, it could be observed that articles 1-5 of the Convention were a women-specific elaboration of the general provisions found in articles 3 and 10 of ICESCR; the rights contained in articles 7 to 9 of the Convention were also protected in articles 24 and 25 of ICCPR; the rights contained in articles 10 to 12 of the Convention were also protected in articles 6 and 7, 12 and 13 of ICESCR; article 13 of the Convention was also reflected in article 3 of ICESCR; and articles 15 and 16 of the Convention were complementary to articles 14, 23 and 26 of ICCPR. Only article 14 of the Convention did not have an equivalent provision in either covenant, but a number of its provisions dealt with such rights as the right to health, education, etc. In the light of those considerations, it was regarded as important to take into account the nature of the Convention and the provisions that it contained.

56. It was also noted that since general obligations requiring States parties to take appropriate measures to eliminate discrimination against women in various areas did not seem to lend themselves to a communications procedure, the question of their justiciability had to be subject to further consideration, such as on the basis of the work of the Committee in providing interpretive observations or general recommendations on each of the substantive articles.

57. Reference was made to the principle of international law whereby its rules solely obligate the States. Private actions, therefore, could normally not constitute a violation of a provision of a Convention. Exceptionally, a Convention might provide that the State party was obliged to introduce, nationally, a supervision system to ensure that private persons respected the obligations of the State enshrined in the treaty. The text of an optional protocol should clearly address whether actions of private persons could constitute a violation of the Convention and as such form the basis of individual communications.

58. In view of the content of the rights contained in the Convention, the point was made that not all rights could be subjected to homogeneous assessment, and that a supervisory body would therefore not be in a position to decide about compliance or lack of compliance with a provision. In addition, to reinforce the argument with regard to justiciability, it was felt that there was a risk of subjectivity in trying to take a position for or against the justiciability of an individual human rights violation.

59. Reference was made to the views of the Committee on Economic, Social and Cultural Rights regarding the question of justiciability, which were submitted to the World Conference on Human Rights (A/CONF.157/PC/62/Add.5, annex II) and were expressed at its fifth session in general comment 3 on the nature of obligations under ICESCR. In that comment, the Committee had rejected the view that economic, social and cultural rights were not amenable to judicial enforcement. The interpretive work carried out by the International Labour Organization (ILO) was mentioned as another example of the justiciability of human rights. The precedent of the Convention on the Elimination of All Forms

of Racial Discrimination was also mentioned. That Convention's individual communications procedure covered all provisions of the Convention, although the nature of their justiciability was not uniform.

60. Examples of the case law of the European Court of Human Rights were provided to further illustrate the justiciability of rights. In the Airey case, for example, the Court had stated that, although the European Convention on Human Rights (ECHR) set forth what were essentially civil and political rights, many of them had implications of a social or economic nature. The Court had therefore considered that the mere fact that an interpretation of the Convention might extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there was no watertight division separating that sphere from the field covered by the Convention (Judgement of 9 October 1979, Series A, No. 32, § 26).

61. Furthermore, the Court's case law had also recognized that, in addition to the essentially negative undertakings laid down in ECHR to refrain from action that would violate rights or freedoms, effective respect for the rights and freedoms of ECHR might entail certain positive obligations for the States parties (see, for example, the Marckx judgement of 13 June 1979, Series A, No. 31, §§ 31 and 45). The Court considered itself competent to review the States parties' compliance with such positive obligations. The specific nature of those obligations, however, was reflected in the fact that the Court generally accepted that a wide margin of appreciation should be left to States parties in such cases.

D. Reservations

62. Some replies addressed the question of reservations to an optional protocol, including those of Spain, Panama, Liechtenstein, Turkey and Austria. Reference was also made to specific comments made to element 28, and the comment on reservations under element 5. Attention was also drawn to the report of the Secretary-General on a comparative summary of existing treaty- and Charter-based communications and inquiry procedures (E/CN.6/1997/4). The section on reservations contained in that report might be relevant to the issues under discussion here.

63. It was emphasized that the ratification of an optional protocol would have no effect on the reservations that a State party had made to the Convention upon ratification or accession.

64. In principle, the explicit and general non-reservation clause to the optional protocol in element 28 was welcomed. It was noted that the optional protocol would deal only with procedural matters and would not contain any substantive provisions, thus making reservations unnecessary.

65. However, a general prohibition on reservations in an optional protocol could have the disadvantageous effect of a smaller number of ratifications of the optional protocol. Accordingly, it was proposed to follow the precedent of the first Optional Protocol to ICCPR, which was silent on the question of reservations. No separate provision should be included in the optional protocol

concerning the powers of the Committee to determine the admissibility of reservations. However, some assurance was required that the Committee on the Elimination of Discrimination against Women would follow the case law of the Human Rights Committee.

66. The general view within the United Nations system seemed to be that a treaty body did not have the power to declare a reservation inconsistent with the object and purpose of the relevant treaty. Reference was made to the Human Rights Committee's statements on the admissibility of reservations. In its general comment 24 (52) on the question of reservations, the Human Rights Committee had stated that it necessarily fell to the Committee to determine whether a particular reservation was compatible with the object and purpose of the Covenant.

67. Concern was expressed regarding the large number of reservations entered to the Convention and their compatibility with the object and purpose of the treaty. It was considered that the Committee, in the framework of an optional protocol, would have the opportunity to consider this point, which is, however, independent of the process of further elaborating the Convention.

68. As to the permissibility of reservations to multilateral treaties, in particular human rights treaties, reference was made to the Vienna Convention on the Law of Treaties, according to which reservations incompatible with the object and purpose of a Convention were not permissible. That principle was reflected in article 28 of the Convention on the Elimination of All Forms of Discrimination against Women. The practice under multilateral treaties was to admit reservations.

69. It was noted that any reservations would need to be made within the framework of article 28 of the above-mentioned Convention, and on that basis, the Committee should direct its attention towards the suggestion of a review of the compatibility of reservations with the Conventions and, consequently, a review of the admissibility of a communication.

70. It was noted that an optional protocol would serve as a factor that would promote the withdrawal of reservations made by States parties to the Convention.

II. COMMENTS RECEIVED REGARDING THE ELEMENTS OF AN OPTIONAL PROTOCOL CONTAINED IN SUGGESTION 7 OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, TAKING INTO CONSIDERATION THE REPORT OF THE OPEN-ENDED WORKING GROUP ON THE ELABORATION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN[3]

Element 5

> "5. States parties to the Convention should have the option to ratify or accede to the optional protocol. 'State party' in this section means one that has ratified or acceded to the optional protocol."

71. China suggested that element 5 be revised to read: "A State party to the Convention that becomes a party to the present protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by a State party of any of the rights set forth in the Convention. No communication shall be received by the Committee if it concerns a State party to the Convention that is not a party to the present Protocol."

72. South Africa noted that States parties to the Convention on the Elimination of All Forms of Discrimination against Women should have the option to ratify or accede to the optional protocol.

73. Mexico noted that the observations of the Working Group were satisfactory; the States parties to the Convention must have the option of signing it and, if they saw fit, ratifying the optional protocol or, as the case may be, acceding to it. Mexico added that, independently of the consideration given to reservations entered by States parties, where a communication was submitted relating to an article of the Convention that was the subject of a reservation on the part of the State party complained of in the communication, the Committee could not agree to consider the communication. Mexico concluded that, in that connection, it should be recalled that the Committee was not competent to take a position on the admissibility of reservations.

Element 6

> "6. Two procedures should be envisaged: a communications procedure and an inquiry procedure."

74. China noted that the main purpose of an optional protocol was to examine individual complaints. Therefore, China suggested that only a communications procedure be envisaged in an optional protocol to the Convention.

75. South Africa, Costa Rica, Panama, Venezuela, LACWHN, CNR, Promoción Cultural "Creatividad y Cambio", CNDDHH, the Group from Costa Rica and Ain o Salish Kendra noted that two procedures should be envisaged in an optional protocol, i.e., a communications procedure and an inquiry procedure. Venezuela noted that that was necessary in order to respond to situations in which violations of the rights of women were believed to have occurred. It would also

make it possible to ascertain whether or not a situation involving a violation of women's human rights existed.

76. Spain considered that an optional protocol should contain both procedures since they were complementary. The inquiry procedure was particularly important in dealing with serious and systematic violations of the rights of women.

77. Chile supported both procedures envisaged in suggestion 7, i.e., the consideration of individual communications for the purpose of "adjudicating" claims with regard to rights; and the other, an inquiry procedure which afforded the Committee the opportunity actively to investigate a situation of systematic violations or cases of serious non-compliance with obligations under the Convention. The former type of procedure would make it possible to provide individual protection for the victims of isolated violations; the latter would deal with non-compliance that was likely to have many victims but which required a more comprehensive solution and, possibly, the provision of general background information that it would be difficult to expect an individual complainant to possess.

78. Colombia considered that the establishment of a communications procedure and an inquiry procedure as envisaged in element 6 was positive, provided that the time limit for admissibility and the conditions to be observed in the various steps to be taken before the Committee on the Elimination of Discrimination against Women took a final decision in the matter were laid down.

79. Mexico reiterated that, if there was a consensus to establish two procedures, the same requirements and procedures as were envisaged for the "communications procedure" (to which Mexico refers below) must also apply to the inquiry procedure.

Element 7

> "7. Communications may be submitted by an individual, group or organization suffering detriment from a violation of rights in the Convention or claiming to be directly affected by the failure of a State party to comply with its obligations under the Convention or by a person or group having a sufficient interest in the matter."

80. China suggested that element 7 should be revised to read: "Subject to the provision in element 5, individuals who claim that any of their rights enumerated in the Convention have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration." China would not agree to the expansion of the right to submit a communication to include "a person or group having sufficient interest in the matter".

81. Costa Rica suggested that communications could be sent by individual women, groups and organizations of private citizens.

82. South Africa repeated the text of element 7.

83. Italy suggested that the procedure be initiated at the request of individuals, groups or associations having, in the opinion of the Committee, a sufficient interest in the matter. Non-governmental organizations in consultative status with the United Nations should always be entitled to submit a communication. In the case of systematic violations, either a direct application by the association or group as a party or the intervention of the association or group on behalf of the victim should be contemplated.

84. Mexico reiterated its initial position, reflected also in paragraphs 32 and 33 of the report of the Working Group, that the right to submit communications should be enjoyed only by individuals or persons under the jurisdiction of the State party that is referred to in the communication who suffer harm as a result of a violation of or non-compliance with any provision of the Convention. Similarly, as had been amply discussed in the Working Group, the criterion of "sufficient interest" could not serve as the basis for the right to submit communications which the optional protocol was intended to establish, since it did not provide for upholding the submission of communications. It did not seem desirable to consider the possibility raised in the Working Group of taking steps "to expand the right to file a communication by allowing filing to be done on the basis of a 'threat of violations ...'"[4] It did seem appropriate, on the other hand, to study carefully and discuss the idea of qualifying the "non-compliance" as "deliberate, widespread or systematic".[5]

85. Spain noted that both individuals and groups having an interest should have standing to file complaints in the context of the communications procedure. There were precedents for such an arrangement both in the Protocol to the Convention on the Elimination of All Forms of Racial Discrimination and in other regional human rights instruments. The granting of standing to groups of individuals was especially appropriate if one took into account the fact that the various forms of discrimination against women were often of a structural nature. As regards violations of that kind, it could also be difficult to identify the victims and consequently the granting of standing to interested groups was the only way to ensure that such violations could be considered in the context of the communications procedure. With regard to the granting of standing to organizations, it should be made clear whether the intention was for the protocol to cover non-governmental organizations.

86. Panama was of the view that any person or persons, or group or legally recognized non-governmental body could submit petitions containing complaints of violations of the Convention by a State party. However, it supported the inclusion of a third category of "organizations" dealing with gender-based violations of a systematic nature, not only because it was as innovative measure but also because other categories were established in the terms of inequality between women and men. Panama agreed that the right to file a communication should be expanded when there were indications of the existence of a threat of violations or infringements of the rights protected by the Convention, since the protocol should be geared more to preventing violations than to punishing them.

87. Austria, Liechtenstein and Denmark noted that the proposal that groups should also be able to lodge complaints was very broad, and went further than what was available under other comparable complaints procedures in the United Nations human rights context, as well as those available at the regional levels.

88. In principle, Austria welcomed that innovative element, which would permit a wide range of individuals and groups to lodge complaints. The proposals would allow the frequently systematic nature of gender discrimination affecting larger groups to be confronted; in many cases, complaints by individuals would not be adequate for confronting such discrimination. At the same time, it would be necessary to discuss the proposal in greater detail so as to be able to take account of the experience gained in the course of other complaints procedures, in particular in connection with the right to complain. Liechtenstein added that that innovative approach could make a special contribution to efficient consideration of massive and large-scale violations of women's rights, and that it therefore deserved further and serious consideration. Denmark commented that the usual condition, i.e., that the plaintiff be "the victim", was not laid down. The competence of the Committee to receive communications from non-victims should be interpreted in accordance with similar practices in other international procedures. In addition, it was not a condition that the victim be subject to the jurisdiction of the State against which the communication was lodged. That was normally a condition, as for example under the first Optional Protocol of ICCPR, and a similar condition should apply under the optional protocol being considered.

89. Turkey and Venezuela agreed that the terms "group" and "organizations" needed further clarification. Turkey added that the distinction between "the victim having the right to complain" and the "person" and "group" or "representative who might file a complaint on the person's behalf" needed to be expressly defined. Venezuela added that there was a need to clarify and define the scope of the term to be used, whether organization or group, in the event that restrictions were to be placed on the categories of individuals or groups having standing to file complaints.

90. Cuba stated that it found the formula "having sufficient interest" to be ambiguous, as it was open to subjective interpretation.

91. Turkey and Luxembourg recommended that the meaning of "having sufficient interest" be clarified. Otherwise, Luxembourg recommended that the phrase be deleted.

92. Luxembourg recommended that element 7 should state that communications could be submitted by individuals, groups of individuals or non-governmental organizations which were the victims of a violation by one of the States parties of a right recognized in the Convention or which claimed to be directly affected by the non-compliance by a State party with its obligations under the Convention. The second part of that sentence would allow for the filing of complaints by individuals in respect of specific incidents, insofar as such incidents were linked to the failure on the part of the State to fulfil its obligations. The State could not, however, be held responsible for discriminatory conduct by any and all individuals under its jurisdiction.

93. Colombia considered that when the victim was physically or psychologically unable to submit a communication, standing should be granted to certain organizations to do so; it would be useful towards that end to specify the categories and characteristics of such organizations. Another positive feature which should be included in a protocol was the possibility of allowing members

of groups to lodge group complaints by having the various members sign the communication.

94. Chile noted that with regard to the procedure for the examination of individual communications it seemed important to uphold the view that any individual or group could initiate the procedure. An individual could lay himself/herself open to considerable risk if he/she lodged a complaint relating to human rights (take, for instance, the consequences that could arise for the complainant at work or within the family). Thus, in order for the system to work, organizations or groups must be granted standing to lodge complaints. It was possible, on the other hand, that in the form of an individual case a violation affecting many others may be examined (for example, discrimination on the basis of nationality or with respect to the legal capacity of women) and it did not seem reasonable to prevent the problem from being submitted by an organization which did not, legally speaking, represent specific individual women.

95. Morocco noted that the determination as to who could submit a communication and the definition of standing were too broad. Morocco could therefore only share the views of those States which had misgivings about the possibility of allowing groups or organizations to refer matters to the Committee and considered that the right to submit communications should be limited to individuals claiming to be the "victims" of a violation of one of the rights contained in the Convention, along the lines of the first Optional Protocol to the International Covenant on Civil and Political Rights.

96. Venezuela stated that in any event the Committee should be given expanded powers to receive and examine communications from individuals who alleged that they were victims of a human rights violation, as provided for in article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.

97. According to Mali, the following should have standing: a person; a person acting on behalf of another person; and associations and non-governmental organizations recognized by the Government and engaged in the protection of human rights.

98. LACWHN, CNR, Promoción Cultural "Creatividad y Cambio", CNDDHH and the Group from Costa Rica recommended that provision should be allowed for communications from both individual women and groups, networks and non-governmental organizations. Ain o Salish Kendra found the provision of broad standing criteria, which allowed not only victims but also those with sufficient interest in the matter to seek redress, to be especially useful. That would allow non-governmental organizations and other public interest organizations to represent the interests of individual victims who might not otherwise have the ability or resources to vindicate their rights.

Element 8

"8. Communications would be in writing and confidential."

99. South Africa, Italy, Cuba, Panama and Mexico noted that communications should be submitted in writing.

100. Panama explained that oral presentation presented some difficulties; other than in exceptional cases, taped submissions could be accepted. Colombia noted that, in certain cases, petitions comprising videos or written statements should be admissible, allowing the Committee to further appropriate investigations. Mexico noted that there was a lack of clarity in the idea put forward in the Working Group that "in exceptional cases, when the Committee deemed that there was no other reasonable way to lodge a communication, some other means could be accepted, such as oral presentation, or taped submissions".[6] On that point, the view was taken that consideration should be given to the practical difficulties that an oral presentation would give rise to, including significant financial implications.

101. With regard to the confidentiality of a communication, Panama expressed the view that the focus should be on the confidential treatment of the communication. The Committee could decide on the subsequent publication of the report. Mexico reiterated that the State party must always be informed of communications, as was the practice under other procedures, with the establishment of proper safeguards for the security of the signatory to the communication. Italy added that the written communication needed to be communicated to the State party.

102. Cuba noted that communications must be treated confidentially, with involvement of the victim, the State and the Committee. In no case should the name of the author submitting the communication against the State be concealed. That would complicate proceedings and impede the objective establishment of the facts and possible subsequent reparation by the State, if it were really responsible.

103. Spain considered that complaints must be treated confidentially and that, in that regard, the practice of the Human Rights Committee could serve as a model. Spain considered, however, that that need must be accommodated with publication of the results of the inquiries by the Committee on the Elimination of Discrimination against Women, since the publication of its findings made a significant contribution to increasing the effectiveness of the instrument. Mexico considered it necessary to maintain confidentiality until the matter was concluded.

104. Luxembourg noted that the meaning of "confidential", which apparently referred to the confidential treatment of a communication, needed to be clarified.

105. With regard to the confidential nature of the report, Mali proposed treatment of communications on a case-by-case basis, in accordance with the geopolitical context of the State party.

106. As to the identity of the petitioner, Mexico reiterated its position that communications must identify the person or persons involved, and that they could not be anonymous [as was also the practice under other similar procedures].

Element 9 (a)

"9. The admissibility of a communication would be subject to the following:

(a) The communication would be inadmissible if a State party to the Convention had not ratified or acceded to the optional protocol;"

107. Mexico noted that no communication referring to a State that was not party to the optional protocol could be admissible.

Element 9 (b)

"(b) The communication should not be anonymous;"

108. Cuba noted that any anonymous communications received should be inadmissible. South Africa noted that a communication should not be anonymous.

Element 9 (c)

"(c) The communication should disclose an alleged violation of rights or an alleged failure of a State party to give effect to obligations under the Convention;"

109. Luxembourg suggested bringing the terminology used in that element into line with that used in element 7 of suggestion 7, taking into account the changes it had suggested.

110. Cuba stated that each communication must describe the facts and indicate the object of the petition and the rights that had allegedly been violated. South Africa stated that a communication should disclose an alleged violation of rights or failure by the State to give effect to the obligations imposed by the Convention on the State party. Mexico suggested that where the communication referred to "alleged" violation or failure to give effect to the provisions of the Convention, it should be understood that it could not be accepted a priori that there was a violation or failure to give effect before the communication had been examined and discussed and before the corresponding information from the State party impugned had been received.

Element 9 (d)

"(d) The communication should relate to acts or omissions that occurred after the State party ratified or acceded to the Convention, unless the violation or failure to give effect to those obligations or the impact continued after the protocol took effect for that State party;"

111. China suggested that the words "unless the violation or failure to give effect to those obligations or the impact continued after the protocol took effect for that State party" be deleted.

112. Luxembourg and Mexico (the latter referring to the report of the Working Group[7] and E/CN.6/1996/10, para. 78) noted that the current formulation of element 9 (d) would be unacceptable in an international treaty since it contradicted the general legal principle of non-retroactivity of norms. For a communication to be admissible, it would need to refer to an act or omission that occurred after the ratification of or accession to the optional protocol by the State party concerned, and not to the State party's ratification of or accession to the Convention. The latter point was also made by Panama, Cuba and Morocco.

113. Similarly, Denmark noted that the possibility of retroactive effect should be avoided. Spain expressed the view that it was not appropriate for the communications procedure to refer to violations that had occurred before entry into force of the protocol since that would be a disincentive to its ratification and would not accord with similar procedures.

Element 9 (e)

"(e) The communication should not be an abuse of the right to submit a communication;"

114. China suggested that element 9 (e) be revised to read: "The communications procedure should not be applied in such a way as to authorize anyone to make unfounded accusations against a State party or make use of distorted facts."

Element 9 (f)

"(f) A communication would be declared inadmissible by the Committee if all domestic remedies had not been exhausted, unless the Committee considered that requirement unreasonable. If the same matter was being examined under another international procedure, the Committee would declare the communication inadmissible unless it considered that procedure unreasonably prolonged;"

115. China suggested the deletion of the following phrases: "unless the Committee considered that requirement unreasonable" and "unless it considered that procedure unreasonably prolonged".

116. With regard to the exhaustion of domestic remedies, Spain noted the particular appropriateness of the drafting of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in that it reflected the practice of the Human Rights Committee. Costa Rica, LACWHN, CNR, Promoción Cultural "Creatividad y Cambio", CNDDHH and the Group from Costa Rica noted that an optional protocol needed to contemplate the possibility of recourse to procedures under international law, even if domestic remedies had not been exhausted, in cases where there was unreasonable delay by the State or little likelihood of effective relief (as was permitted under the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment). Mali stated that all domestic remedies must be exhausted, subject to the effectiveness of those remedies, and that communications must be submitted to the Committee on the Elimination of Discrimination against Women.

117. South Africa and Panama commented that all domestic remedies would need to be exhausted before the aggrieved party could approach the Committee for relief. Panama added, as an admissibility criterion, that the subject matter of the petition or communication must not be pending under any other international procedure. Panama continued that the foregoing provisions would not apply where the domestic legislation of the State did not provide for due process of law with regard to the protection of the right or rights which had allegedly been violated; the alleged victim of a violation had not been allowed access to domestic remedies, or had been impeded in exhausting such remedies; there had been unreasonable delay in a decision with regard to domestic remedies.

118. Luxembourg proposed the addition of the word "available" before the words "domestic remedies". Further, the second element of the first sentence was too vague. The criteria on which the Committee would base itself in declaring the requirement for the exhaustion of domestic remedies unreasonable must be determined.

119. Denmark noted that it was a rule of international law that the State should have the opportunity to correct an alleged violation, such as an alleged violation of human rights, within the national court system before the case could be adjudicated before an international body (rule of local redress). In international conventions, it was normally a condition that the plaintiff shall have exhausted all national remedies before an international body can debate the factual aspects of the case. Should the Committee find that an insistence on that condition in a specific case was unreasonable, the Committee should be entitled to grant an exemption. That subject should be given further consideration.

120. Mexico and Venezuela referred to the report of the Working Group[8] and agreed that it would not appear to be appropriate for the Committee to judge whether domestic remedies had been exhausted. Mexico agreed with the views expressed in the Working Group regarding the appropriateness of seeking a formulation like that used in procedures under the International Covenant on Civil and Political Rights and the Committee against Torture (para. 48 of the report of the Working Group). The author of a communication would have to prove to the Committee that all domestic remedies had been exhausted. Venezuela was in agreement regarding the meaning of article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

121. Cuba noted that a prerequisite for admissibility should be the exhaustion of the domestic remedies available, discarding the view in the report of the Working Group, that that requirement should not be the rule where "domestic remedies were unreasonably prolonged".[8]

122. Morocco recommended the identification and analysis of criteria for determining that domestic remedies were unreasonably prolonged.

123. Italy noted that a communication might be brought under the optional protocol only after the exhaustion of domestic remedies, or when, in the Committee's judgement, they had taken too much time, or when they were not accessible without danger to the petitioner's life and health.

124. Regarding the second part of element 9 (f), Cuba stated that at the time of examination, a communication could not be under consideration under other human rights procedures, thus avoiding the repeated submission of communications already examined by other United Nations bodies.

125. Spain did not consider it appropriate for the Committee to be able to find admissible a communication being examined under another international procedure where it considered the procedure unreasonably prolonged, since that could create friction between the various international human rights bodies and would involve judging the work of those other bodies.

126. Austria and Denmark noted that further discussions would be required on whether the Committee should actually be granted the power to decide on the reasonableness of the duration of proceedings before other international bodies. Denmark suggested that the concrete circumstances of a specific case could also constitute a violation of other human rights conventions, in addition to a violation of the Convention on the Elimination of Discrimination against Women. It was therefore possible that the various communications procedures under United Nations conventions might overlap. Furthermore, Denmark stated that a communication that had already been examined under another international procedure should automatically be declared inadmissible.

127. Mexico referred to the report of the Working Group[9] and noted that the requirements under other communications procedures corresponding to other human rights instruments had undoubtedly demonstrated their effectiveness. No communication should be found admissible if it related to a matter which had been or was being examined under another procedure, including at the regional level, as indicated in the reply to the Secretary-General's first consultation, without regard to the time taken by that procedure. In that regard, Mexico agreed completely that the Committee had no power to "judge the work of other bodies" and, accordingly, that the formulation contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or that contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, should be adopted.

128. The Danish Women's Society noted that the words "unreasonably prolonged" needed to be clarified. It also suggested that it might be advisable to leave it to the Committee to decide whether the period had been unreasonably prolonged.

129. Italy stated that communications regarding procedures already under way must be excluded as an application of the principle ne bis in idem.

130. The Council of Europe commented on the question of the coexistence of various international complaints mechanisms. It noted that questions might arise about the coexistence of a complaints mechanism under the optional protocol and the complaints system under ECHR. Element 9 (f), if followed,

would make it possible for the Committee to examine a matter that had previously been considered under another international procedure. Reference was made to the declarations or reservations that had been made by a number of Council of Europe member States, Parties to ECHR, in respect of article 5 (2) of the Optional Protocol to the Covenant on Civil and Political Rights, so as to exclude subsequent examination of a considered matter under different international procedures. It was therefore considered advisable to avoid such a situation under the optional protocol to the Committee on the Elimination of Discrimination against Women, for example, by taking up the wording proposed in the report of the Working Group,[10] which was also the essence of article 27(1)(b) of ECHR.

131. The Council of Europe noted that another issue of coexistence had been considered in the context of drawing up the recent Additional Protocol to the European Social Charter: a reporting system with a complaints system. In that context, so that all parties to the Charter were kept informed of developments occurring within the complaints system, they were to be notified of collective complaints declared admissible. In addition, parties to the Protocol might submit comments on the complaints.

Element 9 (g)

"(g) The communication would be inadmissible if the author, within a reasonable period, failed to provide adequate substantiating information."

132. Mexico noted that in common with other admissibility requirements or criteria, the time limit for the submission of communications, contrary to the indication in the report of the Working Group,[11] where "it was suggested that the Committee might have this responsibility", should be established in the optional protocol itself, as in the case of other regional and international communications procedures.

133. Turkey expressed a preference for a six-months' time limit, as opposed to three months. Time limits should be specified in the optional protocol, rather than left to the discretion of the Committee.

134. Additional requirements of admissibility, in the view of Cuba, should be the following:

(a) The object of the communications must not be incompatible with the principles of the Charter of the United Nations;

(b) Communications would be admissible if they revealed a persistent pattern of open and reliably proven violations of human rights. They could be found admissible where they were submitted by a person stating that she was a victim of human rights violations, or, failing that, by such a person's family members;

(c) No communication with openly political motives, or references which the State in question found insulting, should be found admissible;

(d) There should be compliance with the principles of objectivity and justice, and a reliable and well-founded source;

(e) Communications from the mass media should not be accepted; and

(f) A time limit should be established for the admissibility of communications without the use of such ambiguous expressions as "reasonable period", which by their nature were open to subjective interpretation.

135. China proposed the addition of a new element 9 (h), to read: "The communication should be in compliance with the principles of objectivity and impartiality, and should include information on legal remedies or reparation undertaken by the respective State party".

136. Italy recommended that a one-year limit be established for submission of a communication from the moment of the decision of last instance, or of refusal at the national level to act on the matter, except in cases of repeated violations or of a different and justified assessment by the Committee. Panama recommended that the communication should be submitted within six months of the date on which the person(s) whose rights had allegedly been violated had been notified of the final decision.

137. Mexico considered it necessary to discuss the appropriateness of establishing a time limit for the submission of communications; in that regard, article 14, paragraph 5, of the International Convention on the Elimination of All Forms of Racial Discrimination was of particular relevance.

138. Panama recommended that the petition must contain the name, occupation, nationality, domicile and signature of the person(s) or of the legal representative of the entity submitting the communication. It was for the Committee to determine whether or not domestic remedies had been exhausted on the basis of the information provided by the parties involved, subject to the above requirements. Unawareness of domestic remedies must not be a factor in the Committee's finding a communication admissible or not, as "ignorance of the law was no excuse". It was extremely important for the communication to comply with the principles of objectivity and justice.

Element 10

> "10. Pending examination of a communication, the Committee should have the right to request that the status quo be preserved, and a State party should give an undertaking to that effect, in order to avoid irreparable harm. Such a request should be accompanied by information confirming that no inference could be drawn that the Committee had determined the merits of the communication."

139. China suggested the deletion of element 10 because it was ambiguous.

140. Cuba did not consider it appropriate to confer on the Committee the power to request a State party to take interim measures. In the final instance, it could recommend measures that the State would take at its own discretion.

141. Spain and Panama noted that the question of interim measures should be dealt within the rules of procedure of the Committee, which would allow the Committee more flexibility in the practical application of such measures.

142. Panama also noted that the recommendations of a committee that monitored the implementation of an international convention ratified by a State must gradually acquire authority, in many cases transcending their scope as mere recommendations, as was the case of the Universal Declaration of Human Rights. There were two stages at which the Committee might adopt interim measures: when the admissibility of the communication was being considered and when its merits were being examined.

143. Luxembourg and Colombia supported the addition of the innovative element covering interim measures leading to the immediate cessation of the violation of a right; in the case of Luxembourg, on condition that it was specified that the Committee had the power to "recommend" interim measures, rather than "request" them. Mali noted that the Committee should have the right to recommend interim measures and to monitor their implementation.

144. Turkey noted that the scope of interim measures needed clarification; similarly, Denmark noted that the actual intention of element 10 required further clarification. The Danish Women's Society noted that the words "status quo" should be clarified so as to prevent inaccurate interpretations.

145. Italy noted that cautionary interim measures should be provided when there was a danger to the petitioner's life and health. In such a case, the Committee should be endowed with urgent precautionary powers similar to those assigned to the United Nations High Commissioner for Human Rights.

146. With regard to the maintenance of the status quo, Mexico commented that, as in other communication procedures, when the State received a request from the Committee for information in response to the communication, the situation did change, but to the benefit of the applicant. The wording "pending examination of a communication, the Committee should have the right to request that the status quo be preserved" could be misinterpreted, and the harm or injury suffered by the person as a result of the action or omission of the State would continue if the Committee made such a request.

147. Mexico further noted, with respect to the statement in the Working Group's report[12] that "in order to avoid irreparable harm, the Committee should be empowered to take urgent action where necessary", that it must be remembered that the Committee's views, suggestions and recommendations were not binding - a fact pointed out at the Working Group's own meetings - and that no other human rights treaty-monitoring body had the power to "take action", as had been suggested during the debate. For the same reasons, it could not be considered appropriate to give the Committee the power to include that or a similar provision in its rules of procedure. In no circumstances could such provisions, which conferred powers or responsibilities on the Committee and, consequently, obligations and responsibilities on States, be included in the Committee's rules of procedure, which, as the name indicated, should simply identify, stipulate and describe the Committee's procedures and organization of work.

148. Mexico also noted that it seemed inappropriate to give the Committee the power to "request" the State party to take measures, and perhaps even to "recommend" interim measures, until it had completed its examination of the communication and reached its conclusions.

Element 11

> "11. While the State party would be informed confidentially of the nature of the communication, the author's identity would not be revealed without that persons's consent. The State party would, within a specified period, provide replies or information about any remedy. While the process of examination continued, the Committee would work in cooperation with the parties to facilitate a settlement which, if reached, would be contained in a confidential report of the Committee."

149. China suggested revising the first sentence of element 11 to read: "The State party would be informed confidentially of the communication. The author's identity would also be revealed to the State party". China suggested that the second sentence be revised to read: "The State party would, within a specific period, submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by the State".

150. Turkey noted that the confidentiality or transparency of the treatment of the communication, the conduct of procedures and the Committee's report had to be discussed and clarified.

151. Chile noted, with regard to confidentiality, that human rights norms viewed the right to due process as a human right and that one important element of that right was that the examination of a case must be subject to public scrutiny. Chile therefore believed that, in principle, the Committee should have sufficient powers to be able to order confidentiality in certain specific cases, depending on the circumstances. That was another area that the Government would leave to the Committee's discretion.

152. South Africa, Italy and Cuba noted that the State party would be informed confidentially of the nature of the communication. Italy continued that the communication was to be brought to the attention of the State party concerned. Panama said that the State party must be informed in full about the communication so that it was aware of the details of the problem and could take the necessary remedial action. Mexico noted that communications submitted to the Committee must be brought to the attention of the State party concerned, as established in other similar instruments such as the Optional Protocol to the International Covenant on Civil and Political Rights and the Convention against Torture.

153. Concerning the confidentiality of the identity of the author, Cuba, Turkey, Mexico and Spain noted that the identity of the author(s) would need to be revealed to the State party. South Africa, Italy, Spain and Panama stated that the author's identity would be not be revealed without the person's prior or express consent. Turkey emphasized that the strength of an optional protocol lay in the fact that no individual or group needed to be identified as complainant, thus reducing the risk of ongoing victimization of those affected.

However, the identity of the author would need to be revealed to the State party to enable it to investigate the allegations, assume its responsibilities and initiate remedial action. Cuba and Spain stated that only with knowledge of the author's identity would the State party be able to provide the Committee with complete information. Spain added that, in exceptional cases, it should be possible not to disclose the author's identity to the State party. Italy added that the identification of the plaintiff was required, unless such identification would endanger the plaintiff's health or life. Denmark noted that a provision to withhold the plaintiff's identity without her or his consent would make the defence of the State most difficult. Cuba added that the plaintiff's name should not be withheld even in exceptional cases.

154. Cuba concluded that, to ensure greater transparency in the Committee's evaluation of communications, it would be important for a representative of the State party to be present. Panama was of the view that, when the Committee was in the process of examining a communication, the parties concerned should not be present. Italy stated that the State party could not participate in the Committee's hearings unless the complainant or her representative was also present. The parties could be questioned by the Committee, including orally, as long as there was respect for the principle of cross-examination. The parties could be assisted by a legal consultant or by a person of their choice.

155. Spain, Italy and Mexico supported the inclusion in the protocol itself of a deadline for the State to respond or provide information on the communication, as was done in article 4, paragraph 2, of the Optional Protocol to the International Covenant on Civil and Political Rights. Spain and Italy considered that six months - the period established in the latter instrument - was appropriate, since that gave the State party sufficient time to conduct the necessary investigations. Italy added that failure to respond would not be made public. Panama suggested that the period should be three months from when the State was informed of the complaint submitted to the Committee. Colombia recommended a time period of three to six months for the State party to present information or replies relating to a communication. Mali stated that the communication should be dealt with within three months.

156. Spain considered that the mediatory aspect of the Committee's intervention should be strengthened, since that kind of intervention was particularly suited to the nature of some provisions of the Convention. That aspect should be developed in greater detail in the protocol itself. Italy noted that any decision of the Committee was to be preceded by an attempt at agreement or mediation (dialogue with the State party) after full argument by both sides.

157. Mexico further noted that the matter of the confidentiality of the procedure and of the Committee's eventual findings was closely related to paragraph 15 of suggestion 7.

Element 12

> "12. The Committee would examine communications in the light of all information provided by the State party, or by the author or received from other relevant sources. All such information would be transmitted to the parties for comment. The Committee would set its procedures, hold closed

meetings when examining communications and, as a whole Committee, adopt and transmit views and any recommendations to the parties. While examining a communication, the Committee might, with the agreement of the State party concerned, visit its territory."

158. China suggested that the first sentence of element 12 be revised to read: "The Committee shall consider communications received under the present protocol in the light of all written information made available to it by the individual and the State party concerned." China suggested that the third sentence be revised to read: "The Committee shall hold closed meetings when examining communications under the present Protocol." China also suggested the deletion of the fourth sentence, and that the fifth sentence be revised to read: "The Committee shall forward its views to the State party concerned and to the individual".

159. With regard to information to be used by the Committee, Cuba, Morocco, Italy and Mexico stated that the Committee would have to work with the information contained in communications and that provided by the State party or the author. Cuba added that it would be unreasonable to attach any value to the testimony of third parties. Italy added that recourse to "other sources" could only be permitted after hearing the parties concerned.

160. On the same point, Spain considered it appropriate for the Committee to be able to examine communications in the light of information provided by the plaintiff and/or the State party and also information received from other relevant sources. The latter possibility might help to enhance the Committee's intervention. The information in question would have to be made available to the parties concerned.

161. Panama noted, on the question of whether or not the Committee would examine communications in the light of information received from other sources, that information should come only from the interested party or the representatives of that party.

162. South Africa stated that the Committee would examine communications in light of all information provided by the State and/or author of the communication. The Committee would set up procedures, hold closed meetings when examining communications, and adopt and transmit views and recommendations to the parties.

163. Turkey stated that the question of whether other relevant information should be considered by the Committee along with the communication and the observations submitted by the State party needed to be further discussed.

164. With regard to visits to the territory of the State party, Cuba stated that it did not consider such visits appropriate. Mexico noted that such visits could be envisaged only in the context of the procedure set forth in paragraphs 17 to 24 of suggestion 7. At the same time, it must be made clear that the Committee would be able to visit the territory of a State party only if that was stipulated in the additional protocol and only if, as all related instruments indicated, the State party agreed.

165. On the same point, Spain stated that, in principle, it considered it inappropriate, in the context of a communications procedure, for the Committee to visit the territory of a State party that was in violation of the Convention, save in exceptional cases. There was therefore no need for the protocol to refer specifically to that issue. In any case, the visit must take place only if the State party gave its consent. Panama suggested that the question of visits to the State party while a communication was being examined could be dealt with in the Committee's rules of procedure.

166. South Africa and Mali stated that while examining a communication, the Committee might, with the agreement/at the invitation of the State party concerned, visit its territory.

Element 13

> "13. When the whole Committee considered that the communication had been justified, it might recommend remedial measures or measures designed to give effect to obligations under the Convention. The State party would remedy violations and implement recommendations. It would also ensure that an appropriate remedy (which might include adequate reparation) was provided. It would also provide the Committee within a set period with details of the remedial measures taken."

167. Turkey noted a lack of clarity in the usage of the term "adequate reparation".

168. Venezuela, referring to the Working Group's report[13] and the wording "... appropriate remedy, including, if need be, adequate reparation", proposed the following wording: "relevant, proportional measures".

169. Cuba believed that the Committee's powers should be limited to suggesting or recommending to a State party that it take certain measures. Such measures would, at all times, have to be consistent with the Convention and with the internal legislation of the State concerned.

170. Spain considered that the protocol should refer to the possibility that the Committee might recommend the adoption of certain measures when it deemed the complaint to be justified. Such measures would have to be set forth in a recommendation that emphasized the mediatory nature of the Committee's intervention.

171. Morocco noted that such a procedure might undermine the independence of State parties' judicial systems and the Committee's views and recommendations should be of a general nature and not legally binding on States parties, since it was up to each State party to judge whether it should take remedial measures.

172. Mexico noted that, while the idea of incorporating the concept of reparation and of giving the Committee the power to "recommend remedial measures or measures designed to give effect to obligations under the Convention" seemed a valid one, it must be made quite clear that Committee could only make "recommendations" to States, as indicated in the Working Group's report.[14] It suggested looking at the formulas adopted in the instruments corresponding to

other committees, including the Optional Protocol to the International Covenant on Civil and Political Rights (articles 5 (4) and 6) and the Convention against Torture (article 22 (7)).

173. Panama stated that, while it was true that the Committee was not a judicial body, it was also true that its recommendations must be considered and adopted by State parties which had ratified the Convention. Both the recommendations of the Committee and the provisions of the Convention would always be subject to the international legal principle of pacta sunt servanda. When a State party ratified a convention, it bound itself to comply with the recommendations of the corresponding treaty-monitoring body. The Permanent Court of International Justice had ruled that it was a principle of international law that the breach of an undertaking brought with it the obligation to make reparation. Reparation was thus essential to the proper application of an agreement. Article 27 of the Vienna Convention on the Law of Treaties established the precedence of international law over internal law quite clearly when it stipulated that a party could not invoke the provisions of its internal law as justification for its failure to perform a treaty, without prejudice to article 46 of that Convention.

174. Spain noted that it would also be appropriate to establish a six-month period for the State party to report on the measures taken to implement the Committee's recommendations. Panama believed that time limits should be set and, given the experience with other procedures, felt that anywhere between three and six months was appropriate.

Element 14

"14. The Committee should have the power to initiate and continue discussions concerning such measures and remedies and have the power to invite the State party to include such information in its reports under article 18 of the Convention."

175. Cuba noted that it did not consider either a follow-up process or the inclusion of such information in periodic reports necessary.

176. Spain supported the inclusion of a reference to the need for follow-up on a situation, once an individual procedure had been concluded.

177. Panama noted that it was of the greatest importance that there should be follow-up on the implementation by each State party of legislative or other measures prohibiting discrimination against women. The entire follow-up process should be part of the reporting system.

178. Mexico suggested that, in accordance with the precedents established by other Committees and existing communications procedures, the Committee should include in the report containing its conclusions on a case an invitation to the State party to indicate in its periodic reports (article 18 of the Convention) any remedial measures taken.

179. Mexico also noted that, in the interests of expediting the work of the Committee, it did not consider it appropriate to extend the proceedings in any individual case.

Element 15

> "15. The Committee would, in its report, summarize the nature of communications received, its examination of them, the replies and statements of the States parties concerned and its views and recommendations."

180. Mexico took note of the observation of the Chairperson of the Committee on the Elimination of Discrimination against Women that the report of the Committee was not confidential.

181. Cuba noted that, since the consideration of the communication was confidential, the information that the Committee provided in its annual report could not violate that principle, since the annual reports were made public.

182. Spain suggested that it was very important that the annual report of the Committee on the Elimination of Discrimination against Women should contain information about work carried out in implementation of the protocol. The publication of the results of the proceedings was an element that would increase their effectiveness.

183. Panama considered that the Committee should summarize the communications received, its consideration of those communications, the replies and statements of the States parties concerned and the views and recommendations. With respect to the latter, their dissemination and compilation was essential in order to lay the foundations for jurisprudence on the human rights of women.

184. Italy suggested that the Committee make its decision within one year of receipt of the communication. The decision should be published.

Element 16

> "16. The Committee would have the power to delegate to a working group its responsibilities under this section. The working group would report to the Committee and the Committee alone would have the power to adopt views and make recommendations."

185. China, Spain and Panama noted that that point should be dealt with in the rules of procedure instead of in the optional protocol itself. Spain added that that was an organizational matter that should not be addressed in the protocol.

186. Italy noted that the proceedings must be prepared exclusively by the Committee, which could not delegate that task to a working group.

187. Cuba stated that the objectives and terms of reference of the working group that would have responsibility for selecting and organizing the documentation to be considered by the Committee should be clearly spelled out. The membership of

the working group should be selected on the basis of equitable geographical distribution and should not exceed five experts.

188. Mexico commented that the Committee had the authority to establish one or several working groups. Nevertheless, it agreed that the authority which had been conferred on the Committee, and that which might be conferred on it under the optional protocol, could not be delegated; therefore, the Committee as a whole was responsible for its decisions.

189. Mexico added that, notwithstanding the foregoing, provision should be made, as in other similar instruments, for the possibility that, when one or more members of the expert committee did not agree with one of the Committee's decisions, they could express in the body of the Committee's report their "dissenting view" together with a statement of the grounds on which it was based.

190. Furthermore, Mexico, in adding a general comment concerning the discussions in the Working Group and some elements found in the text of the report, stated that, even though giving flexibility to and streamlining the work of the Committee had some appeal, as far as the responsibilities of States parties under the optional protocol were concerned, it was important that those responsibilities should be clearly spelled out in the text of the protocol itself, inasmuch as it was a legally binding instrument.

Element 17

> "17. If the Committee received reliable information indicating a serious or systematic violation by a State party of rights under the Convention or of a failure to give effect to its Convention obligations, the Committee should have the right to invite that State party to cooperate in examining the information and in submitting observations on it. After considering those observations and any other relevant information, the Committee should have the power to designate one or more of its members to conduct an inquiry and report urgently to the Committee."

191. China stated that it did not agree to the establishment of an inquiry procedure in an optional protocol to the Convention.

192. Cuba noted, with regard to elements 17 to 22, that it had previously expressed its serious objections to the inquiry procedure as a whole.

193. Morocco stated that the inquiry procedure seemed to undermine State sovereignty.

194. Spain stated that the inquiry procedure should be reserved for cases of serious and systematic violations of human rights. In such cases, the Committee on the Elimination of Discrimination against Women should be able to act proprio motu. Spain understood, nevertheless, that in the Working Group, many States had expressed some hesitation about the appropriateness of including such a procedure in the protocol because they believed the matter required further study.

195. Panama noted that the inquiry procedure in the optional protocol to the Convention would be a mechanism for dealing with serious, systematic and widespread violations of the human rights of women. The investigation of such cases would support the communications submitted to the Committee. Taking into account the views in element 17 as they were currently drafted, Panama believed that it should be made clear that the intention was not that a complaint would not be admitted unless the violation complained of was serious or systematic. Panama noted with concern the views contained in element 17. The Committee should be able to investigate complaints of violations of rights protected by the Convention when it believed a violation had occurred, in accordance with the Convention and the Committee's rules of procedure. The Committee should also be informed urgently of serious and systematic violations of the Convention, so that it could take appropriate measures.

196. Colombia considered the inquiry procedure appropriate when there were situations of systematic and deliberate gender-based violations of rights and violence.

197. Austria noted that the model for the proposal of an inquiry procedure was article 20 of the Convention against Torture. It expressed the opinion that such a procedure could supplement an individual complaints procedure. The experience of the Committee against Torture suggested that an inquiry procedure allowed an international body to address a broader range of issues than it was able to address in the context of individual communications. Also, an inquiry procedure provided the international body with an opportunity to recommend measures to States for combating the structural causes of violations. Such a procedure could guarantee even more effective implementation of the Convention.

198. Austria concluded that discussion on an inquiry procedure was likely to delay the decision on an optional protocol. If that were the case, Austria suggested that the question of an inquiry procedure be provided for in a further optional protocol.

199. Denmark and the Danish Women's Society regarded the inquiry procedure as an important part of the responsibilities of the Committee under an optional protocol. They commented that it would strengthen the Convention and give the Committee the authority to act upon and investigate any information that was brought to its notice on non-fulfilment of the obligations of ensuring the rights in the Convention. The inquiry procedure could also be regarded as an important supplement to the country reporting procedure.

200. Mexico reiterated that the inquiry procedure could only be initiated subsequent to a communication and therefore, the same requirements and procedures as were envisaged for the communications procedure should apply to it.

201. Italy noted that if it were necessary to carry out an inquiry the Committee should have the same powers as a rapporteur in the area of human rights.

202. South Africa reiterated the text of elements 17 to 23 of suggestion 7.

Element 18

"18. Such an inquiry would be conducted with the cooperation of the State party, and might, with its agreement, include a visit to its territory."

203. Panama stated that, if a State party did not cooperate, it would be necessary to have recourse to such other mechanisms established in international treaty law as the Committee should decide to use. As for participation in the inquiry, only the Committee, the State party concerned and the person or persons alleging a violation of their rights should participate.

204. The Danish Women's Society recommended that an investigation should continue even if the State party did not cooperate. The Committee should have the authority to continue and collect information from any number of sources if it deemed it necessary.

205. Mexico stated that it should be clearly understood that the inquiry procedure could take place only with the cooperation of the State party.

Element 19

"19. Following the examination of the findings, which would be transmitted to the State party, the latter would have a set period in which to make observations in response."

206. Mexico and the Danish Women's Society supported having a set period of time for submission of observations. Denmark and the Danish Women's Society suggested that the Committee determine that set period.

207. Panama noted that it should be made clear that States parties must cooperate and provide the information requested by the Committee. However, in cases of serious, systematic and widespread violations of the Convention, the Committee could request an on-site investigation.

Element 20

"20. The inquiry would be conducted confidentially and at all stages with the cooperation of the States parties."

208. Mexico shared the view contained in the report of the Working Group[15] that only the State party concerned would participate in the inquiry, not "States parties".

Element 21

"21. The Committee would encourage the State party to discuss the steps taken by it as a consequence of the inquiry. Those discussions might be continued until a satisfactory outcome was achieved. The Committee might ask the State party to report on its response to the inquiry in its report under article 18 of the Convention."

209. As it had indicated with regard to the communications procedure, Mexico did not believe it was appropriate to continue the procedure as envisaged in paragraph 21 of suggestion 7, since that might result in there being no end to the procedure if the Committee found the State's response to be unsatisfactory.

210. The Danish Women's society recommended that the Committee also have an evaluation and monitoring function in cases in which there was a satisfactory conclusion, which would prevent reoccurrences of violations.

211. Austria and Liechtenstein endorsed the procedure proposed in element 21. Austria noted that the lack of an appropriate follow-up procedure in the optional protocol to ICCPR was considered as a weakness. Having such a follow-up procedure could lead to more effective implementation of the Convention.

Element 22

> "22. After completing all those steps the Committee would be empowered to publish a report."

212. Spain supported the publication of a report even against the wishes of the State concerned.

213. Panama noted that, in principle, the State party should be informed that a report of the Committee would be published, but its approval was not necessary, since one of the purposes of the reports was to establish a body of jurisprudence with respect to the human rights of women. This could be accomplished only by publicizing the Committee's views and recommendations on the communications received, which would be set forth in the report.

Element 23

> "23. When ratifying or acceding to the optional protocol, the State party would undertake to assist the Committee in its inquiries and to prevent any obstacles to or victimization of any person who provides the Committee with information or assists it in its inquiries."

214. Panama noted that, once a State ratified the optional protocol, it assumed the obligation to cooperate with the Committee.

Element 24

> "24. States parties would publicize the protocol and its procedures, the Committee's views and any recommendations concerning a communication received or inquiry conducted."

215. China and Spain suggested that that point should be dealt with in a resolution instead of in the optional protocol. In addition, Spain, Costa Rica, Colombia, LACWHN and the Danish Women's Society underlined the importance of the widest possible dissemination of the protocol and the results of its implementation. The Danish Women's Society encouraged Governments to do all they could to make the protocol known to their citizens once it was adopted and ratified. Colombia added that the Committee must be enabled to disclose cases,

except for names and other essential details, because that would help to encourage States parties to give greater protection to women's rights and prevent violations.

216. Panama noted that the optional protocol should be given wide publicity in order to guarantee its effectiveness in each State party that ratified and acceded to it. A provision to that effect should be included in the protocol itself.

Element 25

"25. The Committee would develop rules and procedures that would enable it to conduct its work fairly, efficiently and, as necessary, urgently."

217. Panama noted that it should be stated explicitly in the optional protocol that the Committee could establish its own rules of procedure, taking into account matters not settled in the protocol.

Element 26

"26. Meeting time of not less than three weeks per annum and resources, including expert legal advice, would be made available to enable the Committee to conduct its work under the Convention."

218. China and Panama noted that the meeting time for the Committee should not be established in the optional protocol to the Convention but should be dealt with in the Committee's rules of procedure. China suggested the deletion of element 26.

219. Spain considered that organizational matters should not be dealt with in the protocol itself. If they were, it would prove very difficult to introduce any changes. Spain wished, nevertheless, expressly to support the strengthening of the position of the Committee on the Elimination of Discrimination against Women, since its role was essential.

220. Concerning the Committee's need to have legal advice available, Spain noted that although it was appropriate for such advice to be provided, it was to be hoped that the Committee's involvement in the implementation of the protocol would have direct results in terms of the fields of specialization of the individuals elected as members of the Committee. Panama noted, regarding the composition of the Committee, that it should include not only lawyers but also professionals in other social sciences, in order to create a multidisciplinary Committee which would take its decisions on the basis of considerations of equity.

221. Spain noted that, within the available resources, an effort must be made to increase the Committee's funding and meeting time. Panama noted that, as for the arrangement for financing the Committee, funding should continue to be provided from the regular budget of the United Nations. Denmark stated that the term "resources" had to be given more specific content. Turkey stated that rules were needed on who would bear the cost of proceedings. Venezuela considered that it was important to determine who would be responsible - whether

the United Nations or States parties - for costs related to the communications and inquiry procedures, taking into account that all human rights treaty bodies were funded from the regular budget of the United Nations. NCJM noted that the improvement of the supervisory machinery of human rights instruments necessarily had financial implications.

222. The Danish Women's Society fully supported element 26. It noted that resources of a financial and legal character, as well as an increase in working time for the Committee, were imperative for the optional protocol to become workable. The Society requested that Governments fulfil those needs so as to allow the Committee to be able to carry out its work. With regard to "resources", it recommended a more specific wording, such as "financial resources".

223. NJCM expressed the view that the adoption of a complaints procedure must not act to the detriment of the Committee's other tasks. If that requirement implied that extra facilities must be made available to the Committee, then such facilities should be provided.

224. Mali stated that costs of proceedings should be the responsibility of the author of the complaint, who should be reimbursed if the complaint was found to have merit.

225. Mexico considered it necessary to reiterate that:

(a) The methods which could be used to strengthen the capacity of the Committee to fulfil its duties and responsibilities under the optional protocol should be studied and discussed in detail. Since the Committee currently had such a large backlog of reports that it had decided to amend article 20 of the Convention, and since pending the entry into force of that reform, the Committee had requested the Conference of the States Parties and the General Assembly to approve an additional annual session of three weeks, the additional time required to fulfil the duties and responsibilities that the optional protocol would entail should be evaluated. Would three sessions of three weeks each be required?

(b) Clear information should therefore be made available on the administrative and budgetary implications of the activities which the Committee would need to undertake to implement the proposed optional protocol, taking into account the human (advisory and technical support staff) and financial resources (conference servicing and travel) for:

(i) sessions devoted to the communications procedure;

(ii) activities arising from the inquiry procedure.

It would be worthwhile to analyse how the costs of implementing the optional protocol would be apportioned. One formula that could be examined, which was already used in the expert committees established by the Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, provided that "States parties shall be responsible for the expenses of the members of the

Committee while they are in performance of Committee functions." (article 8, paragraph 6, and article 17, paragraph 7, respectively).

(c) The procedure that would be established under the optional protocol should be clear and non-controversial, avoiding any element that could cause doubt about its objectivity and lend itself to misinterpretation.

(d) Any mechanism devised to follow up cases which the Committee examined in implementation of the optional protocol should be provided for in the text of the protocol itself, in a way that made clear the commitments assumed by the States parties to the protocol, the duties and powers of the Committee and the responsibilities of its members.

Element 27

"27. Procedures for the signing, ratification, accession and entry into force of the protocol should be prescribed."

226. Spain supported the ratification of the protocol but understood that its entry into force should not be tied to an excessively high number of ratifications. It was understood that the operation of the protocol itself and the quality of the Committee's activities could constitute an important incentive for States which were not parties to ratify or accede to it.

227. Cuba was of the view that the greatest possible number of ratifications should be required for the protocol to enter into force.

Element 28

"28. No State-to-State communication procedure should be included and no reservations permitted."

228. Spain stated that, although it would have preferred reservations to be expressly prohibited, it believed that it was premature at the current stage to take a final decision on the matter. Cuba noted that the procedure for entering reservations to the optional protocol should be given careful consideration.

229. Cuba noted that under no circumstances did it favour a State-to-State communications procedure. Chile had no objection in principle to allowing the Committee to receive communications from States. Experience had shown, however, that procedures of that kind were unsuccessful since there was an understandable reluctance on the part of States to use this right because they believed, perhaps mistakenly, that it could be harmful to other States.

230. Chile stated that, in order for the protocol to produce the desired effect, it was essential that those procedures should not be optional. In other words, procedures could not be established so that a State which ratified the protocol had the right not to be bound by any one of them. The two procedures together could make a difference in terms of compliance with the commitments of the Convention.

Notes

[1] Official Records of the Economic and Social Council, 1996, Supplement No. 6 (E/1996/26), chap. I, sect. C.

[2] Ibid., annex III.

[3] Official Records of the General Assembly, Fiftieth Session, Supplement No. 38 (A/50/38), chap. I, sect. B.

[4] See Official Records of the Economic and Social Council, 1996, Supplement No. 6 (E/1996/26), annex III, para. 36.

[5] Ibid., para. 37.

[6] Ibid., para. 39.

[7] Ibid., para. 47.

[8] Ibid., para. 48.

[9] Ibid., paras. 48-50.

[10] Ibid., para. 51.

[11] Ibid., para. 52.

[12] Ibid., para. 53.

[13] Ibid., para. 75.

[14] Ibid., paras. 71-73.

[15] Ibid., para. 95.